

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:23-CR-00369-M

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRAVIS LAMAR SMITH,


Defendant.

ORDER

This matter comes before the court sua sponte. On February 6, 2025, the court sentenced Defendant to 151 months in custody but deferred the determination of restitution pending further briefing from the parties. *See* DE 66; DE 67 at 6. Thereafter, Defendant filed a notice of appeal. DE 69. The Courts of Appeal disagree as to whether a defendant's appeal of his sentence when the sentencing court has deferred restitution divests the sentencing court of jurisdiction to enter a final restitution order while the appeal is pending. *Compare United States v. Naphaeng*, 906 F.3d 173, 177–78 (1st Cir. 2018) (district court retains jurisdiction over restitution), *with United States v. Thunderhawk*, 860 F.3d 633, 636 (8th Cir. 2017) (no jurisdiction). In a recent unpublished opinion, the Fourth Circuit held that “a defendant's appeal in a deferred restitution case of some portions of his sentence does not divest the district court of jurisdiction to make a final determination as to restitution, from which the defendant might then file a second notice of appeal.” *United States v. Hargrove*, No. 22-4296, 2024 WL 489477, at *1 (4th Cir. Feb. 8, 2024).

Based on that guidance, the court intends to proceed with entering a final order of restitution. To that end, the United States shall file a renewed motion for restitution on or before April 4, 2025. Defendant shall file any response on or before April 18, 2025.

SO ORDERED this 17th day of March, 2025.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE